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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

RIN 0750-AH68

**Defense Federal Acquisition Regulation Supplement: Report on
Waiver of Prohibition on Acquisition from Communist Chinese
Military Companies (DFARS Case 2012-D023)**

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the requirement in the National Defense Authorization Act for Fiscal Year 2012 to report to the congressional defense committees before issuing a waiver of the prohibition on acquisition of United States Munitions List items from Communist Chinese military companies.

DATES: Effective Date: [Insert date of publication in the FEDERAL REGISTER.]

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SUPPLEMENTARY INFORMATION:

I. Background

Section 1243 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81) requires a report to the congressional defense committees not less than 15 days before issuing a waiver to the requirements of section 1211 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163), implemented at DFARS 225.770, Prohibition on acquisition of United States Munitions List items from Communist Chinese military companies. The prior requirement was for a report within 30 days after the date of the waiver. The final rule also adds the requirement to send a copy of the report to Defense Procurement and Acquisition Policy.

II. Publication of this final rule for public comment is not required by statute

"Publication of proposed regulations," 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant

cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because the rule merely alters the timing of the report to the congressional defense committees when issuing a waiver of the prohibition on acquisition of United States Munitions List items from Communist Chinese military companies, adds the requirement to send a copy of the report to Defense Procurement and Acquisition Policy, and further specifies the required contents of the report. These requirements affect only the internal operating procedures of the Government.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501-1 and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 225

Government procurement.

Ynette R. Shelkin

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 225 is amended as follows:

PART 225—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

225.770 [Amended]

2. Section 225.770 is amended in the first sentence to remove "Section 1211" and add "section 1211" in its place and

add "and section 1243 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81)" at the end of the sentence.

3. Section 225.770-5 is amended by revising paragraph (c) to read as follows:

225.770-5 Waiver of prohibition.

* * * * *

(c)(1) The official granting a waiver shall submit a report to the congressional defense committees, with a copy to the Director of Defense Procurement and Acquisition Policy (see PGI 225.770-5), not less than 15 days before issuing the waiver.

(2) In the report, the official shall—

- (i) Identify the specific reasons for the waiver; and
- (ii) Include recommendations as to what actions may be taken to develop alternative sourcing capabilities in the future.

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